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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No, _____

HENRY ANDERSON, Appellant

V.

BERNIECE V. FISHER, CARL BURNHAM jr.,
Appellees

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FROM THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE UNITED STATES COURT
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JURISDICTIONAL STATEMENT

HENRY ANDERSON
676 COVEY ROAD
VALLEY SPRINGS
CA. 95252
(no phone)
Pro Per

TABLE OF CONTENTS

	Pages
QUESTIONS PRESENTED	
I. WHETHER CUSTOM & USAGE IN OREGON CAN SET ASIDE THE U.S. CONSTITUTION?	I,
II. WHETHER THE COURT OF APPEALS MADE PREJUDICIAL ERROR IN IGNORING APPELLANT'S PLEADED EXHIBITS?	2,
III. WHETHER COURT OF APPEALS MADE PREJUDICIAL ERROR BY IGNORING DEPRIVAL APPELLANT'S RIGHT TO JURY TRIAL?	3,
IV. WHETHER THE COURT OF APPEALS ERRED WHEN IT FAILED TO "NOTICE" NOTICE PLEADING ALLOWED BY FRCP & USED BY APPELLANT IN HIS AMENDED COMPLAINT?	3,4,
V. WHETHER THE COURT OF APPEALS DISCRIMINATED AGAINST APPELLANT WITH ITS OWN DISCRIMNATORY RULINGS?	4,
VI. WHETHER THE COURT OF APPEALS ERRED IN CONTRADICTING ITSELF?	4,
OPINIONS BELOW	5,6,
FEDERAL COURT JURISDICTION	7,
TIMELINESS OF APPEAL	8,
POINTS & AUTHORITIES	
POINT I.	9,10
POINT II.	10,11,12,
POINT III.	12,
POINT IV.	13,
POINT V.	14,

TABLE OF CONTENTS CONTINUED

	Pages
CONSTITUTIONAL PROVISIONS & RULES.	
ARTICLE VI.SEC.2.	I5,
VII AMENDMENT	I5,
IX AMENDMENT	I5,I6,
XIII,XIV AMENDMENTS	I6,
42 USC Sec. I98I	I6,I7
42 USC Sec. I982	I7,
42 USC Sec. I983	I7,I8
42 USC Sec. I985 (2)	I8,
RAISING THE FEDERAL QUESTION	I9,20,
STATEMENT OF THE CASE	2I-25,
QUESTIONS ARE SUBSTANTIAL	26-29,
APPENDIX	
COURT OF APPEALS RULING	30,
NOTICE OF APPEAL	
TABLE OF CONTENTS	i,ii
TABLE OF CASE AUTHORITIES	iii,
NOTICE OF APPEAL	iv,
LOWER PORTION OF PAGE 3 of 3 of exhibit 4 SHOWING JUDGES SIGNATURE & THAT THE DECREE WAS MADE ON BURNHAM'S PAPER ALL OF WHICH THE COURT OF APPEALS IGNORED.	V.

TABLE OF AUTHORITIES CITED

CASE LAW

	Pages
BRILEY V CALIFORNIA 564 F2d 849 (C.A. 9th CIR. I977)	4,25
CONNALY V GENERAL CONST. CO. (I926) 269 U.S. 385	I4,26
ELLIS V DYSON (I975) 95 S.CT. I69I	II,
GILLESPIE V CIVILETTI 629 F2d 637,64I (C.A. 9th CIR. I980)	5,
GRAYNED V ROCKFORD (I972) 408 U.S. I04	I4,26
HAGGANS V LAVINE (N.Y. I974) 94 S.CT. I69I	II,
HAGUE V C.I.O. (N.J. I939)59 S.CT. 954, 307 U.S. 496	I2,
LYNCH V HOUSEHOLD FINANCE CO. (CONN. I972) 92 S.CT. III3	I0,
MITCHUM V FOSTER (FLA. I972) 92 S.CT. 2I5I, 407 U.S. 225	I0,
U.S. V. LEE I06 U.S. 220, I S.CT. 26I	9,
WATSON V KENLICK COAL CO. INC. C.A. KY. I974 498 F2d II83	I0,
others	
LASKY 49 CAL. L. REV. 83I, 833 (I96I)	II,

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Pro Se

FILED
APR 4 1983
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY ANDERSON, Plaintiff- Appellant,	No. 82 - 3077
VS	D.C. No. Civ
BERNIECE V. FISHER and CARL BURNHAM, Jr., Defendants-Appellees.	8I - 799 JAR

NOTICE OF APPEAL TO THE SUPREME COURT

OF THE UNITED STATES

Notice is hereby given that Henry Anderson, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the final order of the Ninth Circuit Court of Appeals in affirming the U.S. District Court's order of dismissal. The date of the Appeals Court order is given as February 23, I983.

This appeal is taken pursuant to 28 U.S.C. Sec. I253

Henry Anderson
Plaintiff
Pro Se

NOTE: This copy file stamped April 4, I983 was received by Appellant on 4-27-I983 from the Court of Appeals office.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. _____

HENRY ANDERSON, Appellant,

V.

BERNIECE V. FISHER, CARL BURNHAM jr.,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FROM THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

QUESTIONS PRESENTED

Whether the indeterminate customs and usages of equity, pleaded & used by defendants & the rural judge in defendants prior state court action to cheat appellant of his money & property, whether those customs can be used to set aside the Supreme Law of the Land, the U.S. Constitution, when under Article VI,

section 2, of that Constitution which reads, quote, "This Constitution, and the laws of the United States which shall be made in pursuance thereof; . . .shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." ??

II.

Whether the opinion by the 9th Circuit Court of Appeals is prejudicial & unconstitutional on its face & as applied, in that the opinion deprives Appellant of equal protection of the laws, by the Court of Appeals using its own erroneous precedents as law & ignoring contradicting facts of the case contained in the public records of Oregon which show joint participation by Oregon State Judge Wolff & Defendant Burnham in Burnham's prior state court action shown by

Appellant's exhibits 2, 4, 5, & 6 pleaded in and attached to Appellant's Amended Complaint, exhibit "4" having been prepared by Defendant Burnham on his own office stationary & signed by State Judge Wolff?

III.

Whether the Court of Appeals made prejudicial error, depriving Appellant of his U.S. Constitutional rights, privileges and immunities when the Court ignored the custom & usage of equity in Defendants state action which intentionally discriminated against Appellant by depriving Appellant of his rights to jury trial, as given by the VII. Amendment to the United States Constitution?

IV.

Whether the Court of Appeals made prejudicial error when it failed to "notice" that under the notice style of pleading used by FRCP & which was used by Appellant in his Amended Complaint, the

including by Appellant of relevant exact document copies as exhibits, copies which are self evident, self explanatory in titles, content, use and authorship, those exhibit copies gave adequate notice of their use as required by FRCP?

V.

Whether the Court of Appeals arbitrarily discriminated against Appellant, when the Court used as law its own ad hoc rulings on the vague, indeterminate phrase "under color of law", rulings which did the very thing the law was supposed to correct?

VI.

Whether the Court of Appeals erred when it contradicted its own words used in the memorandum of decision, & applied its I977 decision in Briley v California, 564 F2d 849 (9th Cir. I977) retroactively to actions performed by defendants in I974 & I975?

statutes of the State of Oregon.

DONE and Dated this 4th day of June, 1975.

Circuit Court Judge

Submitted By:

YTURRI, O'KIEF, ROSE & BURNHAM

By: Carl Burnham Jr.
Carl Burnham, Jr.
Of Attorneys for Plaintiff

Mr. Burnham:
Motion by Mr. Anderson as changed and seconded carried entered herein.
Judge Lobdell
June 11, 1975

DECREE OF SPECIFIC PERFORMANCE - Page 3
EXHIBIT 4, Page 3 of 3.

Page 4

YTURRI O'KIEF
& BURNHAM
ATTORNEYS AT LAW

OPINIONS BELOW.

The U.S. District Court for the district of Oregon, in its ruling dated January 25, I982, said that Appellant's action was time barred, & upon the mtion of defendant's dismissed the action. That Court retroactively applied decisions made by the 9th Circuit Court of Appeals, in the years I977, I98I & I982, to acts that were done by defendants in the years I974, I975 and I976.

Appellant appealed that ruling to the 9th Circuit Court of Appeals. The Court of Appeals ruled on February 23, I983, that the District Court was in error and dismissed that Court's ruling applying retroactively rulings made in years I977, I98I & I982 to actions by defendant's that were done in years I974, I975 and I976.

The Court of Appeals then does that very same thing and applies its ruling in Gillespie v Civiletti, 629 F2d 637,64I (9th Cir. I980) to actions done by defendants in the

years I974, I975 & I976. The strange part of that ruling is that the Court of Appeals ruled that Appellant did not allege state action in his Amended Complaint. "BUT"

Appellant in his Amended Complaint pleaded and attached exhibits, which on their face are self evident, self explanatory in their titles, content & authorship. Exhibit 4 was prepared by Defendant Burnham on his own stationary and submiited to State judge Wolff who signed the papers. The Court ignored this.

Also the Court of Appeals said that Appellant didnot allege juror tampering. Nowheres in the records of this case is there any mention of a jury being used. That deprival of Appellant's VII Amendment rights is readily proven by Appellant citing the VII Amendment, and deprival of due process, deprival of equal protection of the laws, deprival of equal rights under the laws, all of which Appellant pleaded. The Court of Appeals dismissed the action & Appellant is appealing.

FEDERAL COURT JURISDICTION

There is complete diversity of citizenship of the parties. The case is a civil action based upon the federal question.

Appellant asserts questions arising under Article VI of the U.S. Constitution, Supreme Law of the Land, VII Amendment rights to jury trial and IX Amendment, Rights not denied to the people and the XIII & XIV Amendments to the Constitution.

Federal Statutes are involved, 28 U.S.C. Sec. I654, self representation in the federal courts, rights of appeal 28 U.S.C. Sec. I29I,

Jurisdiction of the federal question exists under 28 U.S.C. I33I, the civil rights issues 28 U.S.C. I343. Also the statutes of 42 USC I98I, 42 USC I982, 42 USC I983 and 42 USC I985.

The orders below are properly appealable & involve intentional discrimination by the Courts ignoring the facts & Constitution.

TIMELINESS

The District Court made its Order of Dismissal on I-25-I982. The Court Clerk filed it on I-26-I982.

Appellant's Notice of Appeal was filed 2-4-I982. Nine days total for mail from Portland to Appellant & back to Portland.

The Court of Appeals order is dated 2-23-I983. Appellant's one & only notice of that order was received March 22, I983. Appellant prepared a Notice of Appeal & mailed that Notice March 3I, I983 via certified mail to San Francisco. A copy file stamped April 4, I983 was received by Appellant 4-27-I983. Twenty Three (23) days from the Court Clerk in San Franisco to Appellant seems "STRANGE"

Of course it is very strange, but if the Court of Appeals is flooded with work, it could be reasonable.

The Court Clerk's printing of the Memor - andum of Decision, could very easily add several weeks time to notifying parties in the case of the Court of Appeals ruling.

POINTS AND AUTHORITIES

I.

Article VI of the U.S. Constitution clearly states that the Constitution & laws made in pursuance thereof, is the Supreme Law of the Land. . . the judges in every State shall be bound thereby, . . . therefore the actions of state judge Wolff setting aside the Constitution and depriving Appellant of his Constitutional rights, privileges & immunities, including his money & property, is void, unconstitutional.

In United States v Lee 106 U.S. 220; 1 S.Ct. 261 the Court said, "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impugnity, all the officers of the government from the highest to the lowest, are creatures of the law & bound to obey it."

Also in Lynch v Household Finance Co. Conn. (I972) 92 S. Ct. III3, the Court said "Rights in property are basic civil rights."

"This section (42 USC I983) was intended to enforce U.S. Constitutional Amendment I4, Sec. I, against state action, whether that action be executive, legislative or judicial." Mitchum v Foster Fla. (I972) 92 S. Ct. 2I5I, 407 U.S. 225.

"A states judicial proceedings can be a form of actionable "state action" for purposes of this subchapter." Watson v Kenlick Coal Co. Inc. C.A. Ky. I974 498 F2d II83, cert, denied 95 S. Ct. 2639.

II.

The Court of Appeals discriminated against Appellant when it ignored Appellants exhibits of exact document copies showing joint activity by state judge Wolff and defendants in depriving Appellant of his money & property.

IO.

"The bald fact is that there is such an enormous quantity of law, such a vast arsenal of supposed principles, that one does not have to overrule a precedent. There is a much simpler procedure. You simply ignore it. . . There is hardly any set of facts that cannot be made to look right or wrong, actionable or not, depending upon what rules one wishes to highlight & what one wishes to ignore." Lasky 49 Cal. L. Rev. 831, 833 (1961)

"This section (42 USC 1983) & its jurisdictional counterpart section 1343 title 28 authorize federal courts to entertain suits to redress deprivations, under color of state law, of constitutional rights." Haggans v Lavine N.Y.(1974) 94 S.Ct. 1372

"An action under this section (42 USC 1983) is free of requirements of exhaustion of state judicial or administrative remedies." Ellis v Dyson 95 S. Ct. 1691 (1975)

"The constitutional privileges & immunities protected by this section (42 USC 1983) include those secured by due process & equal protection clauses of U.S. Constitutional Amendment 14 as well as by privileges & immunities clause of that amendment." Hague v CIO N.J. (1939) 59 S. Ct. 954, 307 U.S. 496.

III.

The Court of Appeals in its ruling ignored the custom & usage of equity in the action by defendants, of ignoring due process of law by not using juries in trials.

At the first hearing in defendant's prior state court action, the judge a friend of Defendants, denied Appellants oral motion for jury trial, & the judge said he would decide the facts and the law in the case. and the remedy, which he did.

In that way the matter of jury tampering is avoided, you just don't use one, same results, without the risk.

IV.

The Court of Appeals erred in its memorandum of decision, when it said Appellant did not plead state action, the including of documentary copies as exhibits by Appellant, is ample notice for notice pleading used by FRCP and the Court failed to notice that 28 USC 2072 second paragraph says, "Such rules shall not abridge, enlarge or modify any substantive right & shall preserve the right of trial by jury as at common law & as declared by the Seventh Amendment to the Constitution.

In notice pleading the ultimate notice is an exact copy of the item under discussion, being produced for examination by those concerned in the action. This was done by Appellant, "BUT" there is no way Appellant can force the Court to read and recognize the exhibit for what it is, and by whom it was made.

V.

The Court of Appeals arbitrarily discriminated against Appellant in its ruling when the Court cited its own previous ruling as law.

"Color of Law" has no standards of meaning in the phrase or how it is to be applied.

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning & differ as to its application, violates the first essential of due process of law. Connaly v General Const. Co. (I926) 269 U.S. 385.

"Not only does a vague statute run the risk of entrapping the innocent, it impermissibly delegates basic policy matters to policemen, judges, & juries on an ad hoc & subjective basis, with the attendant dangers of arbitrary & discrimnatory application." Grayned v Rockford 408 U.S.I04 (I972)

CONSTITUTIONAL PROVISIONS AND RULES.

ARTICLE VI, SECTION 2, U.S. CONSTITUTION

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in Constitution or laws of any State to the contrary notwithstanding.

AMENDMENT VII to the U.S. CONSTITUTION

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of common law.

AMENDMENT IX to the U.S. CONSTITUTION

The enumeration in the Constitution, of certain rights, shall not be construed to

deny or disparage others retained by the people.

AMENDMENT XIV to the U.S. CONSTITUTION

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. 1981. EQUAL RIGHTS UNDER THE LAW.

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full

and equal benefit of all laws and proceedings for the security and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. I982. PROPERTY RIGHTS OF CITIZENS.

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. I983. CIVIL ACTION FOR DEPRIVATION OF RIGHTS.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or

immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. I985 (2) CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS.

; or if 2 or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Teritory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing or attempting to enforce, the right of any person or class of persons, to the equal protection of the laws.

RAISING THE FEDERAL QUESTION.

Appellant in his original & amended complaints raised the federal question of conspiracy by Defendants to deprive Appellant of his U.S. Constitutional rights, privileges & immunities, includ-- equal protection of the laws, due process of law and equal rights under the law, & Defendants depriving Appellant of his property & money and the intentional infliction of emotional distress upon Appellant.

The U.S. District Court for Oregon granted Defendant's motion for summary judgement and dismissed Appellant's action as being time barred. No opinion was given by the Court on the various causes of action against Defendants alloged by Appellant.

Appellant appealed that ruling to the U.S. Court of Appeals for the 9th Circuit.

The Court of Appeals ruled that the

District Court erred in its applying the limtation statute retroactively & reversed the ruling.

The Court of Appeals then dismissed Appellant's action on the grounds that no element of state action was alleged, by Appellant in his Amended Complaint.

Appellant pleaded & attached to his Amended Complaint exact copies of documents as exhibits, which copies show direct participation by defendants & state agents in the conspiracy.

The Court of Appeals made prejudicial error when it ignored the existance of the evidence of joint state & defendant action.

The Court of Appeals also ignored the conspiracy by defendants intentionally depriving Appellant of his U.S. Constitutional rights, privileges and immunities, as shown by the exhibits that were before the Court.

STATEMENT OF THE CASE

Appellant filed an Amended Complaint in the United States District Court for the District of Oregon, alleging violations & jurisdiction on the basis of 28 U.S.C. I33I 28 U.S.C. I343, 42 U.S.C. I98I, 42 U.S.C. I982, 42 U.S.C. I983, and 42 U.S.C. I985, as well as the U.S. Constitution, Articles VII, XIII and XIV. See C.T. 9: I5-20..

Appellant alleged that the matter in controversy exceeded Ten Thousand Dollars ($I0,000.00) and that the jurisdiction rested upon a federal question. He also alleged that there was complete diversity of citizenship of the parties, and that the action was also based on Oregon Revised Statute, hereafter O.R.S. I2.070 (I) and O.R.S. I2.080 (I), O.R.S. I2.080 (2) and O.R.S. I2.I40. See C.T. 9: 2I-25.

Appellant alleged that Appellees, Berniece Fisher and Carl Burnham conspired to deprive Appellant of his Constitutional

rights to equal protection of the laws by fabricating a complaint against him in a prior State Court action.

Appellant further alleged that they acted as co-conspirators in this Complaint & State Court Action brought against Appellant, arising out of the transaction concerning the sale of real property. See C.T. 9: I,2.

Appellant further alleged that Appellees acted to deny him his equal protection under the law and to deny him his privileges and immunities under the law, as well as to deny him his due process of law and that Appellee BURNHAM acted in violation of his ethical duties in violation of Oregon Revised Statute 9.460, by misrepresenting certain facts in the underlying State Court Action. See C.T. 9: p. 2, 3.

Defendants filed a Motion for Summary Judgement, see C.T. 5, pursuant to F.R.C.P. 56, but they filed no affidavits with this

Motion for Summary Judgement, although they did file a memorandum of Points &Authorities. See C.T.6.

The basic thrust of the Defendants motion was that a 42 U.S.C. I98I and a 42 U.S.C. I983 action would follow the analogous statute of limitation, and that the analogous State statute of limitation must have run on Appellant's cause of aotion, thereby barring this federal suit. See C.T. 6.

The District Court Judge treated the Motion for Summary Judgement as a Motion to Dismiss, see C.T. II, I2, and then granted the motion against Appellant necessitating this Appeal.

The United States Court of Appeals for the Ninth Circuit decided the Appeal on February 23, I983. The Court of Appeals ruled that the District Court erred in its applying a two year statute of limitations retroactively to Appellant's Civil Rights Claims.

Nonetheless, the Court of Appeals affirmed the judgement on alternate grounds.

These alternate grounds cited by the Court of Appeals, contradict the facts of the case & as such require further appeal to the United States Supreme Court by the Appellant acting as his own counsel.

The Court of Appeals rules that Appellant fails to allege the element of state action in his section 1983 claim. The Court of Appeals didnot read the pleadings & exhibits.

Appellant under the notice style of pleading used by F.R.C.P. pleaded & attached copies to his Amended Complaint of exhibits 2, 4, 5, and 6, all of which are self evident and self explanatory in titles, content & authorship showing direct state involvement in the action. The Court of Appeals erred in making its ruling.

Also the Court of Appeals in its memorandum of decision erred by contradicting its own words and applying its 1977 ruling

in Briley v California , 564 F2d 849 (9th Cir. I977) retroactively to defendants actions which took place in I974 & I975.

The Court of Appeals also says that appellant fails to allege either witness or juror tampering.

Appellant cites in his Amended Complaint under Jurisdiction, the VII Amendment to the United States Constitution which gives Appellant the Right to Jury Trial. That Right was never given up by appellant.

The Court of Appeals fails to realize that under custom and usage of the artifice of equity, there is no jury trial. See C.T. 9, Jurisdiction page I.

On the basis of these and other errors made by the Court of Appeals, appellant appeals to the United States Supreme Court for relief.

SUBSTANTIAL QUESTIONS

The supreme law of the land, the U.S. Constitution, is the most substantial law of the land, therefore the customs & usages in Oregon of setting that Constitution aside, raise questions substantial enough to be decided by the Supreme Court; the foremost defenders in civil life of that substantial document.

The vague term "COLOR OF LAW" used in 42 USC I983, a term which has no standards of meaning or application & allows arbitrary and discrimnatory ad hoc application by policemen, judges & juries, is by its nature contrary to the U.S. Constitution.

In Connaly v General Const. Co. (I926) 269 U.S. 385, the Court said, "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning & differ as to its application, violates the first essentials of due process of law."

"Not only does a vague statute run the risk of entrapping the innocent, it impermissibly delegates basic policy matters to policemen, judges, & juries on an ad hoc & subjective basis, with the attendant dangers of arbitrary & discrimnatory application." Grayned v Rockford (1972) 408 U.S. 104.

There are more citations to be had ruling in similar ways in similar cases.

The 9th Circuit Court of Appeals as predicted by that citation has arbitrarily discriminated in its decisions on that law by creating by definition, what the Congress forbid and cannot do by law. Namely the Court of Appeals has ruled that private lawyers are exempt & do not act under color of law.

Those rulings are so obviously discrimnatory as to require the Supreme Court to face the issue and provide guidance on it. There are an infinite number of ways in which to act under color of law and to create loopholes for certain persons is to nullify the laws intent of "EVERY PERSON".

This action by Appellant against Defendants Fisher & Burnham shows the other actual brutal side of color of law which was before the Court of Appeals & which the Court ignored.

On page 3 of exhibit 4 attached & pleaded by Appellant to his Amended Complaint, that page shows that Defendant Burnham composed and typed the decree of judgement on his typewriter, using his stationary, in his offices and had the county judge sign it.

Under the terms of exhibit I, pleaded & attached by Appellant to his Amended Complaint, the amount of damages if any were claimed, was to be I0% or $2,400.00 of the selling price. Defendant Burnham since he wrote the decree of judgement, collected TWELVE & ONE HALF times that amount or in dollars $30,000.00 from Appellant, all under color of law.

This the 9th Circuit Court of Appeals ignored by ignoring Appellant's exhibits.

Under the circumstances which have only been touched upon briefly by Appellant, the Supreme Court should examine the phrase "Color of Law"closely and make definite standards of meaning and application and rule out any exemptions or privilege by any person who violates the law.

The other item of the Court of Appeals discriminating against Appellant by ignoring things pleaded in Appellant's Amended Complaint and ignoring exhibits which show the conduct complained of, is a common situation in legal actions, where when the going gets rough the trial judges & Courts of Appeal try to ignore the items if they can do so, which then requires more work on the part of the Supreme Court.

For the reasons noted, this Court should assume jurisdiction of this appeal.

Appellant requests this Court to vacate the Memorandum of decision of the 9th Court of Appeals affirming the District Courts Order of Dismissal & continue the action/case.

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

HENRY ANDERSON,
Plaintiff-Appellant,

vs.

BERNIECE V. FISHER and CARL BURNHAM, JR.,
Defendants-Appellees.

No. 82-3077
D.C. No. CV 81-799-JAR
MEMORANDUM

Submitted — January 31, 1983

Decided — February 23, 1983

Appeal from the United States District Court
for the District of Oregon
Honorable James A. Redden, District Judge, Presiding

Before: PREGERSON, NELSON, and NORRIS, Circuit Judges.

We unanimously agree that this case is appropriate for submission without oral argument.

Henry Anderson appeals pro se the dismissal of his civil rights action under 42 U.S.C. §§ 1981-1985 against Berniece Fisher and her lawyer, Carl Burnham, Jr. Anderson alleged in his complaint that Fisher and Burnham conspired to deprive him of his rights by prosecuting and winning a state court action against him for specific performance on a land sale contract. The district court dismissed the action under Fed. R. Civ. P. 12(b)(6), on the ground that it was barred by Oregon's two-year statute of limitations for section 1983 claims.

The district court erred in applying the two-year statute retroactively to appellant's civil rights claims. *See Boag* v. *Chief of Police,* 669 F.2d 587, 588 n.1 (9th Cir. 1982) (two-year statute not to be applied retroactively). The district court erred also in applying the two-year statute to appellant's other civil rights claims. *See Kosikowski* v. *Bourne,* 659 F.2d 105, 108 (9th Cir. 1981) (two-year statute applies only to section 1983 claims).

Nonetheless, the judgment is affirmed on alternate grounds. Appellant fails to state a claim under Fed. R. Civ. P. 12(b)(6) for other reasons. He fails to allege the requisite element of state action for his section 1983 claim. *See Gillespie* v. *Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980); *Briley* v. *California*, 564 F.2d 849, 855 (9th Cir. 1977) (privately-retained attorney does not act under color of state law). Similarly, appellant fails to allege the requisite element of racial discrimination for a section 1981 or 1982 action. *See London* v. *Coopers & Lybrand*, 644 F.2d 811, 818 n.4 (9th Cir. 1981) (section 1981); *Phiffer* v. *Proud Parrot Motor Hotel, Inc.*, 648 F.2d 548, 551 (9th Cir. 1980) (section 1982). Nor does appellant allege either witness or juror tampering under the first part of section 1985(2), *see Rutledge* v. *Arizona Board of Regents*, 660 F.2d 1345, 1355 (9th Cir. 1981), *cert. granted*, 102 S.Ct. 3508, or discrimination as required by both the second part of section 1985(2), *id.*, and section 1985(3). *See Briley*, 564 F.2d at 858-59.

AFFIRMED.

A/O, USC 3-8-83—600